

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

AN INVESTIGATION INTO THE RATES)
AND CHARGES OF HARDIN COUNTY) CASE NO. 9383
WATER DISTRICT NO. 1)

O R D E R

On July 1, 1985, an on-site billing inspection was performed by Public Service Commission ("Commission") staff at the offices of Hardin County Water District No. 1 ("Hardin No. 1") in Radcliffe, Kentucky. The staff report of the billing inspection raised questions as to the rates being charged Hardin No. 1's two special contract customers, Hardin County Water District No. 2 ("Hardin No. 2") and the City of Vine Grove ("City"), as well as questions concerning certain operational practices and procedures employed by Hardin No. 1.

By Order of July 12, 1985, the Commission scheduled a hearing in the matter to be held at the offices of the Commission on July 25, 1985. The staff report was made a part of the Order, and copies were mailed to each Commissioner of Hardin No. 1 and Hardin No. 2 and to the City. The hearing was held as scheduled. Representatives from Hardin No. 2 appeared at the hearing; however, there were no representatives from the City present.

After hearing considerable testimony, the Commission determined that the hearing should be continued and an informal conference should be held. A decision as to further hearing was

held in abeyance pending the outcome of the informal conference. The conference was held on August 1, 1985. The Commission has determined, based on the results of the conference, that no further hearing is necessary in this matter.

On August 1, 1985, Hardin No. 1 filed revised tariff sheets and copies of its contracts with Hardin No. 2 and the City, requesting the Commission's approval of its proposed rates and contractual conditions of service. On August 15, 1985, Hardin No. 1 filed First Revised Sheet No. 1 to its tariff rules and regulations.

FINDINGS

Unauthorized Rates

After entry of the Order in its last rate case (Case No. 8173, Application of Hardin County Water District No. 1 for Approval of the Increased Water Rates to be Charged by the District, dated September 21, 1981), Hardin No. 1 increased its rates to Hardin No. 2 effective with the bill rendered on November 20, 1982, and again with the bill rendered on December 20, 1984. The rate to the City was increased effective with the bill rendered on February 24, 1983, and again with the bill rendered on January 15, 1985. The rates were determined by a formula contained in contractual agreements between Hardin No. 1 and each of these two wholesale customers. Hardin No. 2 and the City were notified of the rate increases by way of cost of production statements calculated at the end of August each year. The contracts and rates were placed into effect without approval of the Commission.

807 KAR 5:011 provides that changes in the provisions or rates in a tariff may be made by Order of the Commission upon formal application or by issuing and filing on at least 20 days' notice to the Commission and the public revised tariff sheets stating all provisions and schedules proposed to become effective. Section 13 of that regulation requires that all special contracts which set out rates, charges or conditions of service not included in the general tariff be filed with the Commission. Such contracts are subject to the regulations applicable to tariffs so far as practicable.

Hardin No. 1 failed to obtain approval of the Commission prior to placing changed rates into effect either by the filing of its special contracts, revised tariff sheets or by application as required by the regulation. However, by accident or otherwise, the rates charged were determined by a formula, agreed to by Hardin No. 1 and its customers, which reflects the cost of water production so that only the actual cost has been recovered and excess revenue has not been generated through these rates.

KRS 278.030 provides that the utility is entitled to collect fair, just and reasonable rates for its services. The Commission is of the opinion that the rates determined through application of the formula were reasonable in that they provided for cost recovery only. The Commission is of the further opinion that, under these circumstances, to require Hardin No. 1 to refund

moneys collected from the unauthorized portion of the rates would, in effect, create a situation whereby the customers of Hardin No. 1 would provide a subsidy for the customers of Hardin No. 2 and the City. Therefore, no refund should be required.

On August 1, 1985, Hardin No. 1 filed its revised tariff sheets and special contracts, along with cost justification, for Commission approval. In accordance with 807 KAR 5:011, Section 8, Hardin No. 1 should give notice to its contract customers and should file evidence of such notice with the Commission forthwith.

Operational Practices and Procedures

Hardin No. 1's current tariff contains a provision making landlords and tenants jointly responsible for water charges and requiring all customers who are not the property owner or have at least a 1-year lease to make a deposit.

Hardin No. 1's proposed tariff revision also contains a provision making landlords and tenants jointly liable for water charges. It is the opinion of the Commission that landlords and tenants cannot be held jointly liable for water charges. Rather, the person who applies for and receives the service is responsible for charges for that service. Likewise, a tenant with good credit cannot be denied service because of a prior delinquency incurred by a former tenant or the landlord at that address; nor can a landlord with good credit be denied service in the name of the landlord at their rental property because of a delinquent bill owed by a former tenant even when the new tenant is a delinquent customer of the utility.

807 KAR 5:006, Section 7, allows the utility to require a cash deposit or other guaranty to secure payment of bills not to exceed 2/12 of the customer's estimated annual bill when bills are rendered monthly, or the utility may establish an equal deposit amount for all customers of the same class of service. When the former method is chosen, the utility may develop standard criteria for determining whether or not a deposit should be required of a particular customer, and rental or ownership of property may be included in such criteria as one factor to be considered; however, the utility may not discriminate against a particular group of customers within a class, such as renters, by making this the only consideration in the deposit determination. In instances where the equal deposit option is chosen, the deposit amount may not be in excess of 2/12 of any customer's bill and must be required of all applicants for the same class of service.

Hardin No. 1's proposed tariff reflects that it will utilize the deposit option allowing an amount not to exceed 2/12 of the customer's estimated annual bill.

807 KAR 5:011, Section 12, requires that every utility provide a suitable table or desk in its office for the display of the statutes, Commission regulations, and the utility's tariffs setting out rates, rules, and regulations governing the utility's service, and a suitable placard in large print indicating that these are kept there for public inspection.

At the time of the billing inspection, only a small flyer showing the residential rate schedule was available to the public, and office personnel was unable to locate copies of the utility's

tariff, Commission regulations, or the statutes, although Mr. Marvin Logsdon, Manager, later testified that these were in the files. Current statutes, Commission regulations, and utility tariffs should immediately be made available to the public as required by 807 KAR 5:011, Section 12.

In its testimony, Hardin No. 1 indicated that it was not aware that special contracts required approval of the Commission or that it was not in compliance with other regulations and policies of the Commission. The Commission cannot accept a state of unawareness as an excuse for noncompliance. Every utility has an obligation to familiarize itself with and remain current with all statutory and regulatory requirements affecting the utility and its operations. Further, that obligation extends to the training of employees who are necessarily involved in carrying out the responsibilities imposed by the statutes and regulations and disseminating information to the public.

The Commission hereby notifies Hardin No. 1 that further violations of the statutes and regulations are unacceptable and that, should such violations reoccur, appropriate action will be taken.

SUMMARY

The Commission, having reviewed the evidence of record and being advised, is of the opinion and finds that:

1. Hardin No. 1 has increased the rates to its two special contract customers without proper authorization.

2. The formula by which the rates were calculated resulted in rates which provided only recovery of costs and did not

generate additional revenue. Therefore, no refund should be required.

3. The rates of 79.14 cents and 80 cents per 1,000 gallons are fair, just, and reasonable rates to be charged Hardin No. 2 and the City, respectively, and should be approved.

4. Hardin No. 1 should give notice to its contract customers as required by 807 KAR 5:011, Section 8, and should file evidence of such notice with the Commission.

5. Hardin No. 1 should file all special contracts or amendments thereto with the required 20 days' notice to the Commission and the public prior to placing into effect any changed rate, provision, or condition of service not included in its approved tariff. Further no rate or charge made by Hardin No. 1 should be changed without proper notice and approval of the Commission.

6. Hardin No. 1's tariff pertaining to joint landlord-tenant liability should be denied and the tariff should be revised to reflect the Commission's opinions discussed at length herein.

7. Hardin No. 1's proposed deposit policy should be approved, and Hardin No. 1 should develop standard criteria for determining deposit requirements consistent with this Order.

8. Hardin No. 1 should immediately provide for a suitable display, readily available to the public, of the statutes, regulations and tariffs governing its service as provided by 807 KAR 5:011, Section 12.

IT IS THEREFORE ORDERED that First Revised Tariff Sheet No. 7 showing the rates found reasonable herein be and it hereby is approved.

IT IS FURTHER ORDERED that all special contracts containing rates, provisions, or conditions of service not included in the approved tariff and proposed changes in any rate or charge shall be filed with the required notice to the Commission and the public prior to placing them into effect in accordance with applicable statutes and regulations.

IT IS FURTHER ORDERED that Hardin No. 1 shall provide notice of the rates approved herein to Hardin No. 2 and the City in accordance with 807 KAR 5:011, Section 8, forthwith, and shall file evidence of such notice with the Commission within 20 days of the date of this Order.

IT IS FURTHER ORDERED that the proposed tariff provision holding landlords and tenants jointly liable for water charges be and it hereby is denied and that Hardin No. 1 shall file revised tariff sheets in accordance with the findings of this Order.

IT IS FURTHER ORDERED that the proposed tariff provision relating to deposit policy be and it hereby is approved and that Hardin No. 1 shall develop standard criteria to be used in deposit determination in accordance with the findings herein.

IT IS FURTHER ORDERED that Hardin No. 1 shall immediately provide for a suitable display of the statutes, regulations, and tariffs in accordance with Finding No. 8 herein.


IT IS FURTHER ORDERED that Hardin No. 1 shall cease and desist from any and all practices contrary to the statutes,

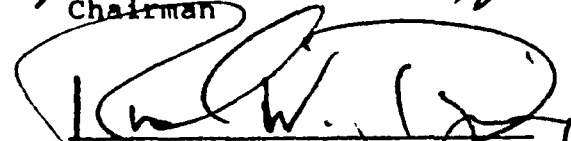
regulations, approved tariffs and Orders of this Commission and, further, shall be responsible for maintaining up-to-date knowledge and application of all such statutes, regulations, tariffs, and Orders and for dissemination of pertinent information related thereto to its employees and customers as applicable.

IT IS FURTHER ORDERED that revised tariff sheets required to be filed herein shall be filed with the Commission within 20 days of the date of this Order.

Done at Frankfort, Kentucky, this 26th day of August, 1985.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Secretary